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No. 84-756

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1984

BETTY MOORE,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,
Respondent.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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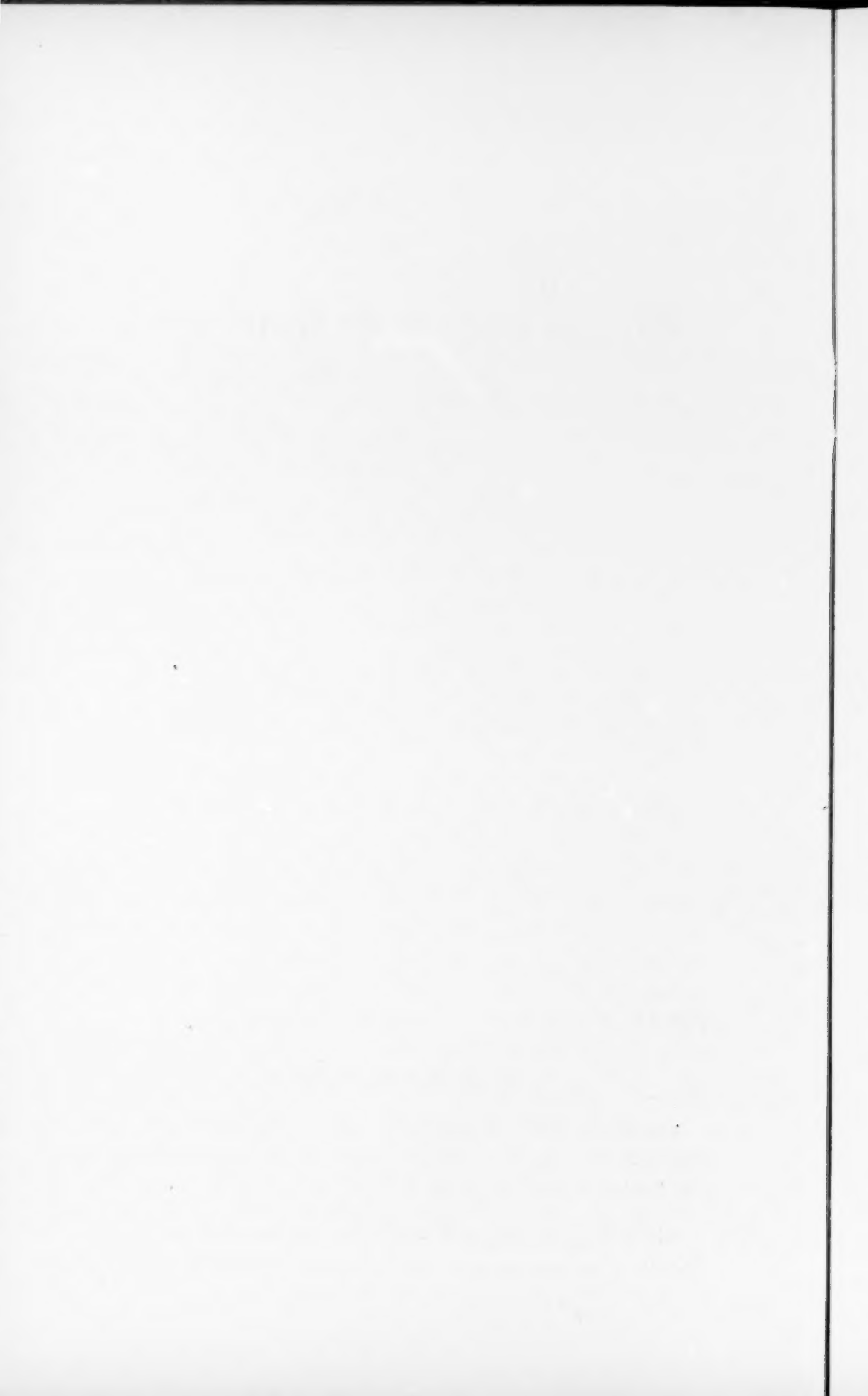
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The respondent, General Motors Corporation, respectfully requests that this Court deny the Petition for Certiorari seeking review of the Eighth Circuit's opinion in this case. That opinion is reported as *Moore v. General Motors Corp.*, 739 F.2d 311 (8th Cir. 1984).

RULE 28.1 STATEMENT

The following is provided by General Motors Corporation pursuant to Rule 28.1, Revised Rules of the Supreme Court of the United States:

All United States and Canadian subsidiaries of General Motors Corporation are wholly owned with the exception of

Motor Enterprises, Inc., which is partly owned by the United States Small Business Administration. Royal Insurance Company of America is an independent insurance carrier for General Motors Corporation and may have a financial interest in the outcome of this litigation.

STATEMENT OF THE CASE

The facts of this case are set out in the opinion of the Eighth Circuit, *Moore v. General Motors Corp.*, *supra*. Its procedural history is as follows:

This case originated in the Circuit Court of the City of St. Louis. It was removed to the United States District Court because of the diversity of citizenship existing between the parties and the amount in controversy. 28 U.S.C. §1332. In the action brought in the state Court, Moore claimed breach of contract and negligence on the part of General Motors Corporation in its actions concerning her transfer as a laid-off employee of the General Motors Plant in St. Louis to a new plant in Bowling Green, Kentucky. After the case had been removed to the United States District Court for the Eastern District of Missouri, General Motors Corporation brought a Motion for Summary Judgment in which it was demonstrated that Moore had failed to exhaust the grievance and arbitration procedures provided in the Collective Bargaining Agreement upon which she based her right to transfer for work in Bowling Green. General Motors Corporation also showed that the Collective Bargaining Agreement did not require General Motors Corporation to transfer Moore with due care, but even assuming that General Motors Corporation had a duty to transfer Moore with due care there had been no breach of that duty.

General Motors Corporation argued that even if it were true that Moore's Complaint would have stated a cause of action in tort, any such claim was preempted by national labor policy established under the National Labor Relations Act of 1947

because the alleged tortious conduct arose out of the administration of the Collective Bargaining Agreement between General Motors Corporation and the United Auto Workers, Moore's exclusive bargaining representative.

The case was set for trial on December 8, 1982 and, on that date, the Court continued the trial setting and deferred ruling on General Motors Corporation's Motion and granted Moore ten days in which to respond to the federal preemption argument and/or plead a cause of action under §301 of the Labor Management Relations Act of 1947, 29 U.S.C. §185. Moore did file an Amended three-count Complaint in which she alleged negligent misrepresentations, recovery of lost wages, and a new fraud count, but completely failed to plead any claim for breach of the Collective Bargaining Agreement. General Motors Corporation, on January 7, 1983, moved for dismissal of the fraud Count on the basis that she failed to plead fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure. General Motors Corporation renewed the argument that the fraud claim as well as the others was preempted by national labor policy and that she had failed to plead a claim for breach of the Collective Bargaining Agreement.

On February 4, 1983, the District Court sustained the motions of General Motors Corporation and dismissed Count III of Moore's Amended Complaint and granted summary judgment to General Motors Corporation. Moore perfected a timely appeal to the United States Court of Appeals for the Eighth Circuit which Court, on June 29, 1984, affirmed the judgment of the District Court. Moore's Petition for Rehearing and Rehearing en banc was denied by the Court of Appeals on August 17, 1984.

REASONS WHY THE WRIT SHOULD BE DENIED

The Order of the District Court, which has been affirmed by the United States Court of Appeals, is amply supported by the record. This Court, in *San Diego Building Trades Council v.*

Garmon, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775, has clearly set out the test by which the doctrine of federal preemption is to be applied. When state law is invoked to regulate activities which are the subject of a collective bargaining agreement, the National Labor Policy requires that state law yield to the application of National Labor Law. In the opinion which Petitioner now seeks to have reviewed by this Court, the Eighth Circuit said:

“To achieve uniform federal regulations, Congress enacted the National Labor Relations Act, 29 U.S.C. §151 et seq., intending to replace inconsistent state laws with a uniform national labor policy. In *Garmon* the Supreme Court set forth the guidelines to be followed in applying federal labor law preemption. The Supreme Court held that state jurisdiction must yield to the primary jurisdiction of the National Labor Relations Board when conduct is arguably or potentially subject to the National Labor Relations Act either as a protected activity under section 157 or an unfair labor practice under Section 158. If conduct is potentially subject to the National Labor Relations Act, state regulation is precluded regardless of the remedy sought.” P. 315.

The Court of Appeals, at page 316 of its Opinion, noted that the decision to preempt federal and state court jurisdiction over a given class of cases depends on the nature of the particular interest being asserted and the effect of concurrent judicial and administrative remedies upon the administration of national labor policies. The Court pointed out that this case does not involve any claim of violent tortious activity. Neither does this case involve malicious libel nor does it involve intentional infliction of emotional distress. The only tortious conduct alleged by Moore to have been committed by General Motors Corporation involves Moore's right of transfer to a new plant, a right which was created only by the Collective Bargaining Agreement negotiated by her union.

Moore had no right to transfer other than whatever rights she might be entitled to as a result of the Collective Bargaining Agreement entered into between General Motors Corporation and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and the Memorandum of Understanding entered into on December 4, 1980 between the same parties. The Court of Appeals noted, in footnote 5 (page 314) that the Collective Bargaining Agreement provided for resolution of grievances. Without the Collective Bargaining Agreement and especially without the Memorandum of Understanding between her union and General Motors Corporation, Moore had no claim whatever to a right of transfer to a new plant.

The District Court, on December 8, 1982 granted leave to Moore to file an amended complaint so as to state a claim under the Collective Bargaining Agreement. Instead, Moore filed an additional claim alleging common law fraud. The Collective Bargaining Agreement is the only source of Moore's claim to transfer rights. The same agreement requires that Moore resort to the grievance procedures set out therein. Moore has never alleged compliance with those procedures and her failure to exhaust the grievance procedures of the Collective Bargaining Agreement is a defense to a suit on the agreement. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 96 S.Ct. 1048, 47 L.Ed. 2d 231; *Vaca v. Sipes*, 386 U.S. 171 at 184, 87 S.Ct. 903, 17 L.Ed.2d 842.

Petitioner is asking that this Court exercise its discretionary jurisdiction to consider a case in which the applicable law has been clearly stated by this Court. The Petition does not allege that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. The fact is that neither the District Court nor the Court of Appeals has done so. The Petition does not allege that the Court of Appeals has decided an

important question of federal law which has not been, but should be, settled by this Court and Petitioner has not demonstrated that the Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this Court. The Court of Appeals has not done so. See Rule 17.1(a) and (c), Revised Rules of the Supreme Court of the United States.

CONCLUSION

Petitioner's eligibility, application for and transfer were wholly governed by the terms of the exclusive Collective Bargaining Agreement. These facts are uncontroverted. Moore's membership and seniority in the U.A.W. entitled her to benefits and transfer privileges, but she had no rights absent the Collective Bargaining Agreement.

The existence of a state court cause of action should not depend upon plaintiff's characterization of the case, nor upon artful pleading. Any dispute between employee and employer as to virtually any bargained work rule, job assignment or claim of right, could be characterized as fraud or another common law tort. Such dispute would, nevertheless, remain a labor dispute to be decided according to the provisions of the Collective Bargaining Agreement.

For the foregoing reasons, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit should be denied.

Respectfully submitted,

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